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PATENT  
Attorney Docket No. 101.0093-01000  
Customer No. 22882

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	)	Confirmation No.: 6670
Gary K. Michelson	)	
Serial No.: 10/675,820	)	Group Art Unit: 3733
Filed: September 30, 2003	)	Examiner: James Swiger III
For: DYNAMIC GUARD	)	

Mail Stop AMENDMENT  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

**REPLY TO OFFICE ACTION**

In reply to the Examiner's Office Action of October 16, 2007, the following remarks are submitted.

In the Office Action, the Examiner rejected claims 1-28 (including independent claim 1) under 35 U.S.C. § 103(a) as being unpatentable over U.S. Publication No. 2003/0135220 to Cauthen ("Cauthen") in view of U.S. Patent No. 6,699,247 to Zucherman et al. ("Zucherman"). Independent claim 1 is directed to a guard with a body having a first portion and a second portion, where said first and second portions define an opening for providing a protected pathway to adjacent vertebral bodies and a disc space therebetween, and are "pivotal about an axis that passes through at least a portion of the pathway." As discussed below, Applicant's invention as recited in Independent claim 1 is not obvious under 35 U.S.C. § 103(a) in view Cauthen, Zucherman, or a combination thereof.

Recently, in KSR International Co. v. Teleflex Inc. et al., the Supreme Court reaffirmed the framework for governing obviousness under 35 U.S.C. § 103(a) is set forth in Graham et al. v. John Deere Co. of Kansas City et al., 383 U.S. 1, 148 U.S.P.Q. 459 (1966). (See KSR v. Teleflex, 127 S.Ct. 1727 (2007)). Under Graham v. John Deere, the question of obviousness is resolved on the basis of factual determinations including (1) the scope and content of the prior art, (2) the differences between the

Reply to Office Action 11-14-07.doc